Policing Critique

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Review article of Wouter Werner, Marieke de Hoon, & Alexis Galán, *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge University Press, 2017)

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Abstract: Can fiction fan the spark of hope in Martti Koskenniemi's critical international law writings? In the course of a critical reading of Wouter Werner, Marieke de Hoon, & Alexis Galán, *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge University Press, 2017), this review article argues against the hermeneutics of suspicion and for a more reparative approach to doing international law critically. Drawing on work in Literary Studies, it identifies the limiting effects suspicion has on critique and suggests that fiction offers a way of grounding abstract concepts and thinking through their detailed implications. It illustrates this technique by reading Koskenniemi's thinly drawn figure of the critical professional alongside the trope of the maverick cop in TV police procedurals, with special reference to *The Wire*.

Introduction

What is critique? For Martti Koskenniemi, the subject of this collection of essays and 'one of the icons' of international law (9), it is to say 'no'. He provides an epilogue to this volume of critical readings of his work which responds to the contributors in a series of noes – no to abstraction, no to empiricism, no to constructivism, no to enchantment – but ends in a tantalising 'perhaps'. Perhaps it is possible to do international law work critically. Who is this critical professional? What are moral instincts? How can we introduce them into our professional lives? For all Koskenniemi's noes, we never find out.

Editors Wouter Werner, Marieke de Hoon and Alexis Galán have a different approach to critique or, rather, criticism. They have compiled a set of readings of Koskenniemi's work which sets out to 'challeng[e] and deeply engag[e]' his writing (9). Even the more robust readings affirm more than they negate because of the respect close attention pays to

scholarly writing. Assembling a formidable line-up to reveal 'fresh perspectives', on well-known ideas (10), the editors set out to recuperate Koskenniemi's over-used oeuvre for serious scholarship. Contributors pay particular attention to the indeterminacy thesis, the culture of formalism, counter-disciplinarily and his turn to history. Although the editors have taken pains to represent a 'wide range of functional areas' and 'even broader range of theoretical perspectives' (10), it is a shame the range of voices is so narrow – most of the contributors are white men from institutions in the global North.

Inspired by the volume's generous, appreciative project, I approach Koskenniemi's negative critique with a view to opening it up rather than shutting it down. This essay takes critique as an act of reclamation,[1] reclaiming Koskenniemi's assertion of international lawyers' moral agency from the sea of noes that overwhelm the redemptive impulse. Hi epilogue, 'To Enable and Enchant – on the Power of International law', is awash with refusal. Abstraction enchants, it says, and must be apprehended and interrogated wherever it is found, whether in positivism, high theory, empiricism, or constructivism. The techniques, frame and disposition of this critique are a product of Koskenniemi's professed commitment to the hermeneutics of suspicion (396). Valuable though it is, suspicion is only one mode of critique and one that we may have good reason to set aside when it inhibits other projects especially those which, in Anne Orford's phrase, may prove 'enlivening, productive and critically transformative' (304).

Koskenniemi's own critically transformative project, which presses international lawyers to take responsibility for their work and follow their 'gut feelings' (411), rather than blindly comply with management directives, falls victim to the hermeneutics of suspicion. Koskenniemi is convinced that 'it would be wrong to simply dispense with international law altogether' (410), but he cannot tell us how to find out what our moral sensibilities are saying, or decide when we ought to follow them. To do so would be to truck with abstraction and this is *verboten*. As Eve Sedgwick showed, suspicion says no absolutely, without exception. Her alternative was to read reparatively.[2] How might we read Koskenniemi's work reparatively? Literary studies, Sedgwick's home discipline, suggests some possibilities. Here I draw in particular on Rita Felski's *The Limits of Critique*[3] to understand how the narratives of suspicion – its structural biases, we might say - police the limits of critique and prevent Koskenniemi from fanning what Marks and Lang call 'the spark of hope' in his work.

I attempt to kindle the spark with other, fictional, narratives. Fictions allow us read more detail into Koskenniemi's waifish gestures, opening them to critical appreciation not

[1] Wendy Brown, *Edgework* (Princeton University Press, 2005) 21
[2] Eve Kosofsky Sedgwick, 'Paranoid Reading and Reparative Reading, or, You're so paranoid, you probably think this essay is about you' in Eve Kosofsky Sedgwick, *Touching, Feeling* (Duke University Press, 2003)
[3] Rita Felski, *The Limits of Critique* (Chicago University Press, 2015)

shutting them down. What is Koskenniemi getting at when he advocates moral agency? What does he have in mind when he talks about moral sentiments? Where might such an approach take us in the future? I turn to the fictional narratives of the police procedural to bring Koskenniemi's figure of the critical professional to life, drawing on the HBO series *The Wire* to imagine them as maverick cops.

1. The Hermeneutics of suspicion

Koskenniemi declares that his critique is driven by the hermeneutics of suspicion (396). The term is usually credited to Paul Ricoeur, who used it to affirm the suspicious thinking of Freud, Marx and Nietzsche. He thought they were united by three things: a shared suspicion of false consciousness, a method of deciphering it; and a goal of substituting it with a better mode of consciousness.[4] Koskenniemi fits this bill, too. He tackles false-consciousness head-on in his epilogue by suggesting that law has an 'enchanting power' that obscures the work international lawyers do to transform power into authority (393); he crafted structuralist and historical methods of deciphering this transformation in *From Apology to Utopia* and *The Gentle Civilizer*, respectively; and finally, he (re)turned to Kant, admonishing international lawyers to exercise their moral agency by self-consciously reflecting on their actions and, more lately, to Adam Smith's theory of moral sentiments, counselling us to follow our 'gut instincts' (411) casting justice as 'a 'fleeting sensation' about a wrong having been committed' (410).

In her work on the hermeneutics of suspicion in literary criticism, Felski has shown how critical scholars use the metaphors of 'digging down and standing back' to explain their ways of seeing.[5] The piercing gaze of the former method discovers concealed meanings and the wide-angle lens of the latter defamiliarises the object of critique by placing it in a new context. Koskenniemi has employed both techniques in his scholarship as styles, if not methods.[6] We can read *From Apology* as an excavation of the deep structure beneath the practice of international law argumentation. He used 'deconstruction' to perform a 'regressive analysis' and uncover the 'deep structure' of international law argument.[7] *The Gentle Civilizer* digs down into the detail of international law argument by re-describing the positions that had appeared 'flat' in the structure of legal argumentation as rounder commitments that carried political valences in particular contexts.[8]

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[4] Paul Ricoeur, *Freud and Philosophy: An Essay on Interpretation* (Yale University Press, 1970) 34-35
[5] Felski, n 3 above, n 3 above, 52-84
[6] Martti Koskenniemi, 'Letter to the editors of the symposium' (1999) 93(2) AJIL 351
[7] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argumentation* (CUP, 2005) 6
[8] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP, 2002), 8

In the epilogue to the present volume, Koskenniemi argues that law's 'enchanting power' comes from its ability to conceal power relations by asserting that its processes are ruled by law not men (393). Hegemonic power is all the more insidious because it claims legitimacy, which it gets *inter alia* from international law. As 'a product of a colonialist history and a hopeless legitimizer of an unequal world', Koskenniemi believes that 'the law won't save anybody' (410). While international law argumentation may be, in the abstract, indeterminate, in practice decisions are the product of institutions' structural bias and the unequal power relations of an unjust world.

Koskenniemi does not advocate abandoning international law, but he sees little cause for hope. International law is not for progressive projects. International lawyers must be fatalistic and accept that it will be used for conservative purposes, while remaining strategically attuned to the possibility of leveraging features of formal law for political struggles of resistance and emancipation. International law can only become politically opposable to hegemony and conservativism if international lawyers accept that political engagement is part of their international law practice, thereby regaining their 'autonomy and legitimate political contestation' and 'sense of choice and responsibility' (402). Two things stand in the way of this: Doctrine peddles the myth that law is autonomous from power and managerialism makes functionaries of international lawyers, generating 'unreflective support of the structural bias within a particular expert discourse'.[9] Neither approach allows for international lawyers to be politically engaged.

Suspicion is an all-or-nothing enterprise. Koskenniemi is not wrong to be wary of international law, but he shoots himself in the foot because suspicion is his *only* mode of critique. Suspicion is valuable because it helps us see our field differently; what was once thought benign is shown to be troubling, what was once taken-for-granted is shown to be contingent, what was once familiar is shown to be strange. In international law the authority of law can be bought by the highest bidder and, as he and others tirelessly – and rightly – remind us, it is an export of the global North – a Eurocentric product foisted on the rest of the world (as Obregón discusses in Chapter 14). Koskenniemi is also right to demand that we notice how international law obscures unequal power relations, injustice and suffering – and he is certainly right to press us to recognise how we international lawyers contribute to obscurantism and to tenaciously refuse to do so. But there is more to life than being right – particularly when, as Sedgwick shows, one inhabits a paranoid position, characteristic of which is the desire to avoid 'bad surprises' by anticipating bad news.[10] Bringing an end to the 'excruciating uncertainty'[11] of indeterminacy, but replacing it with

[9] Martti Koskenniemi, 'Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization' (2007) 8(9) *Theoretical Inquiries in Law* 9-36, 17
[10] Sedgwick, n 2 above, 130-131
[11] Felski, n 3 above, 39

fatalistic despair, Sedgwick shows that the hermeneutics of suspicion is no more realistic or less delusional than the Utopian scholarship it critiques.[12]

2. Antinormative normativity

Suspicious critique is not a marginal enterprise in international law. As the editors of the collection point out, Koskenniemi's approach is part of the mainstream - it even forms the basis of a textbook (2).[13] Harvard Law School's Institute for Global Law and Policy has also done much to disseminate the approach through its network and its residential fellowship programmes. The editors dub its Faculty Director, David Kennedy, Koskenniemi's 'sparring mate' (6). These initiatives attest to suspicious critique's 'infinitely doable and teachable protocols of unveiling'[14] and 'protocols of professional pessimism',[15] but they are hardly indoctrination programmes. How does suspicion sustain its compliance pull? Felski explains that its persuasive and normative force come from the narratives it tells. She shows how suspicious critique uses the detective story form to raise expectations, frame views and establish conditions of plausibility. Other narratives sound like fabulous tales of 'complacency, credulity and conservativism'.[16]

This section presents the 'antinormative normativity' of the hermeneutics of suspicion, to use Felski's phrase. This 'skepticism as dogma'[17] is apparent in Koskenniemi's responses to some of the contributors of the volume under review and I use these reactions to illustrate the restrictive effects of the hermeneutics of suspicion in action. The first considers explicit forms of normativity and the second implicit ones.

a) The Law of international lawyers

Although the editors do not make the valence explicit, it is hard not to read the title of this collection, *The Law of International Lawyers*, as a reference to Koskenniemi's own status as an authority figure in the discipline. No doubt it *also* refers to the focus on international lawyers in Koskenniemi's writing, but the editors give so much air-time to 'the growing 'mainstreaming' of critical international law' (2), that the temptation to draw the connection is irresistible. Of course, laying down the law is the last thing that critique wants to be seen to do. Foucault thought it 'incapable of laying down the law', though he admitted that it 'wants very much to police'.[18] Orford calls Koskenniemi out for doing precisely this,

[12] Sedgwick, n 2 above, 150
[13] Jan Klabbers, *International Law* (CUP, 2013)
[14] Sedgwick, n 2 above, 143
[15] Felski, n 3 above, 128
[16] ibid, 8
[17] ibid, 9
[18] Michel Foucault, 'What is Critique?' in J. Schmidt (ed.) *What is Enlightenment?* (University of California Press, 1996), 383

squeezing out and shutting down 'enlivening, productive and critically transformative' work (304). Koskenniemi does this in two ways: by prohibiting abstraction and prescribing contextualisation.

i. Prohibiting abstraction

In one of the most hard-headed critiques in the collection, Nikolas Rajkovic turns the weapon of suspicious critique against Koskenniemi's rejection of the interdisciplinary agenda of international law and relations.[19] Rajkovic says no to Koskenniemi's counterdisciplinarity, suggesting that he uses the concept to 'orientalize' the discipline of International Relations by asserting 'a positional superiority' (170). He maps disciplinary space and accuses Koskenniemi of having a 'territorial mind-set' (186) that 'fails to grasp how all disciplinary space is profoundly abstract, overlapping and non-terrestrial' (170).

Responding to these criticisms, Koskenniemi does not mention the wince-inducing use of Edward Said's work to defend a discipline created, to quote Susan Pedersen, 'to figure out how to preserve white supremacy in a multiracial and increasingly interdependent world'.[20] Instead, his response focuses on the 'enchanting abstraction' of Rajkovic's critique and suggests that a better reference than *Orientalism* would have been Said's *Culture and Imperialism*, which shows how 'theoretical abstraction operates at the service of [] ideological machinery' (399). Koskenniemi reiterates his opposition to the 'wholly positivistic discipline' of International Relations and its love of 'methodological abstraction…so as to enlist the power of scientific vocabularies to reach the prince's ear' (400). Koskenniemi's prohibition of this sort of work is categorical – no more abstraction.

Abstraction inhabits other, less obvious places too. In his chapter, Eric Posner sets out to supply the missing empirical evidence to bear out Koskenniemi's critique of human rights law (124). Posner's empirical conclusions may support Koskenniemi's theoretical work, but Koskenniemi cannot support the claim to scientific objectivity made by empirical methodology. He has long been unforgiving of the way empirical sociology obscures its abstract premises under layers of data and findings.[21] Given the consistency of Koskenniemi's opposition to this sort of scholarship, it is no surprise that in response to Posner he reiterates the position that 'social science imposes its unacknowledged values and choices on the world it seeks to rule in the name of what it thinks of as incontestably "real"' (400). Built on abstraction, empirics enchant too, and Koskenniemi categorically rejects them.

[19] See e.g. Martti Koskenniemi, 'Law, Teleology and International Relations: An Essay in Counterdisciplinarity' (2012) 26(1) *International Relations* 3-34

[20] Susan Pedersen, 'Destined to Disappear' (Oct 2016) 38(20) *London Review of Books* 23. Pedersen reviewed *White World Order, Black Power Politics: The Birth of American International Relations* by Robert Vitalis (Cornell University Press, 2015)

[21] Koskenniemi, n 7 above, 524

ii. Prescribing contextualism

Koskenniemi polices international law work by prescription as well as prohibition. In her chapter, Orford worries that his insistence on contextualising (301), effectively shuts down any project that does not respect strict historical method and its periodisations.[22] She says history-as-method uses the slurs of anachronism and ahistoricism to dismiss attempts by international lawyers to engage with the past and to prevent those who do engage with it from 'interven[ing] in the development of the law' and moving it towards a 'less repressive future' (312). Her criticisms find an echo in Felski's work, which argues that treating history as a box cages 'the transtemporal liveliness of texts'.[23] While New Historicism has worked hard to emphasise 'the historicity of texts and the textuality of history', it 'leans towards diagnosis rather than dialogue' and tends to 'quarantin[e] difference, deny[] relatedness and suspend[]…the questions of why past texts matter and how they speak to us now'.[24] New Historicism crossed with suspicion, in other words, equals negative critique.

Koskenniemi responds that he does not recognize himself in Orford's critique. He does not share 'the positivist separation between the past and the present' (406) and has previously criticised 'full-scale contextualism' for insisting 'on the separation of chronologically distant moments from each other and the illegitimacy of producing judgments across contextual boundaries'.[25] This, he implies, amounts to methodological abstraction and, as we have just seen, Koskenniemi will not tolerate any method that claims to establish objective facts.[26] This response, however, does not quite address Orford's point. After all, Koskenniemi's work has been consistently contextual. *The Gentle Civilizer*, for example, was an express attempt to resituate disciplinary debate in historical context after the generalities of *From Apology*. Koskenniemi said his earlier 'formal-structural analysis' had presented 'an image of the law [that] remained rather static' because 'it did not situate the lawyers whose work it described within social or political contexts, to give a sense that they were advancing or opposing particular political projects'.[27] The introduction of the concept of structural bias in the second edition of *From Apology* brought abstracted legal argumentation into institutional contexts.[28] Given this ambivalence, perhaps it is best to heed Koskenniemi's advice that 'it is often better not to define but to *show* what one means' (398), and look at how he treats context in the epilogue.

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[22] See also, Anne Orford, 'On International Legal Method' (2013) 1(1), *London Review of International Law* 166–197
[23] Felski, n 3 above, 154
[24] ibid, 156
[25] Martti Koskenniemi, 'Vitoria and Us' (2014) 22 *Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte* 119-138, 129
[26] See also, Koskenniemi, 'Letter to the Editors of the Symposium'
[27] Koskenniemi, n 8 above, 1-2
[28] Koskenniemi, n 7 above, 600

Many of the volume's contributors mention the culture of formalism Koskenniemi introduced at the end of *The Gentle Civilizer*. It captured international lawyers' imaginations and raised their hopes. Toope and Brunée, for example, use it as a jumping-off point for their Lon Fuller-inspired 'culture of legality (139). Koskenniemi recontextualises the concept in the epilogue, pruning it back hard and cutting off the unruly shoots which it has sprouted. He explains that the culture of formalism was embodied in Wolfgang Friedmann, a professor of law at Columbia University who used formalist arguments to oppose US interventionism in the 1960s. Koskenniemi makes clear that the righteousness of Friedmann's actions were in the man, not the law - the culture of formalism itself is not a guarantee of emancipatory politics.[29] He says he was conducting an experiment – 'to examine the possibility of a legal practice beyond the purely strategic' (398). Back-pedaling or not, Koskenniemi's reading of his own work here is undeniably contextualist.

Perhaps one reason for cycling back on the culture of formalism lies in his desire to respond to Samuel Moyn's (suspicious) critique. Moyn suggests Koskenniemi's grasp of context is insufficiently sophisticated because it 'failed to situate international law within a larger set of actual and possible modes of politics'. *The Gentle Civilizer* was 'a romance of international law as a saving grace in the face of otherwise unconstrained power' (341). Koskenniemi refutes this accusation by reasserting his commitment to context. He denies suggesting that formal international law should be central to political thought in general, saying his preference for '(Left) neo-formalism' applied only to 'domestic and international institutions' in which international law is already present. In these contexts, neo-formalism offers 'a way to think about the power and limits of […] professional commitments and the role of moral and political responsibility' (405).

Koskenniemi's commitment to context is not only a question of historical method. He is also concerned with present-day contexts and affirms the importance of critical sociology as a way of accessing them. Mégret gently suggests Koskenniemi is 'a less dedicated sociologist' than historian,[30] who could learn from Bourdieu. This could provide the missing 'sense of social reality' that explains 'the actual determinacy of international law despite conditions of indeterminacy' (267-8). Koskenniemi accepts the criticism, agreeing that a 'critical sociology [is] indispensable' for examining the 'historical and institutional structures, systems or knowledge and practice' (402). Unlike Posner's empiricism, critical sociology is valuable because of its 'reflexivity…its ability to turn its gaze on the subject…shaking the certainty of disciplinary practices' (290). It has a disenchanting effect, disrupting the way law 'makes us believe that things are right or wrong, true or false' (393). Past or present, Bourdieusian fields or historical contexts, Koskenniemi states that '[t]he task is to try to see

[29] Below, s. 2(b)

[30] Posner is also somewhat disparaging about Koskenniemi's 'ad hoc empiricism' (133)

present legal professionalism in its context' (402). Orford's critique, I would say, finds its mark.

When Koskenniemi dismissed the 'full-scale contextualism' of historical method, his concern was not to move towards a less repressive future, but to enable critical international lawyers to use history as a means of resistance without having to 'accept the standpoint of »universal justice«'.[31] Rejecting this standpoint means accepting that 'the law won't save anybody' and living with the small comfort that 'it might be possible to use it for a good purpose' (410). We can only do so on condition we are fully conscious of the power relations at play in the moment of use. Koskenniemi contemplates the transtemporal use of history as a political strategy, judging such uses by whether they 'contribute to emancipation today'.[32]

Whether or not he agrees with Frederic Jameson – who is often associated with New Historicism - that Marxism holds the key to a philosophy of history that respects the specificity of the past while disclosing its solidarity with the present day,[33] is a matter for another article. His work seems, nevertheless, to share Jameson's commitment to 'the priority of the political interpretation' of texts.[34] Politics is always contextual – something is at stake here and now, there and then. The hermeneutics of suspicion are political in the mode of guerilla struggle. Longer term politicking is associated with moderates and conservatives. '[C]ritical international law is perhaps not reducible to abstract discourses, methods or 'principles'' (411), Koskenniemi writes at the end of his epilogue. Its interventions are determined by the heat of this battle or that insurgency. It is ruled by tactical and strategic realities and its field of vision is limited by lowering battlefield horizons which block out imagined futures.

b) Telling tales

Rule by fiat is only one way of propagating norms. Suspicious critique also normalises through its narratives. Felski depicts suspicious critics 'as writers of certain kinds of narrative scripts' - specifically detective fiction.[35] Narratives condition us to expect certain outcomes, to attribute certain motives or interests to the characters and to read ambiguity in particular ways. When a discipline comes to expect a certain narrative arc, alternative stories seem out-of-place and out-dated, like the *Bildungsroman*s Koskenniemi associates with the long-gone imaginary of Rolin and other *fin-de-siècle* jurists.[36]

[31] Koskenniemi, n 25 above, 123
[32] ibid, 129
[33] Fredric Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (Cornell University Press, 1981), 2
[34] ibid, 1
[35] Felski, n 3 above, 89
[36] Koskenniemi, n 8 above, 79

International law is replete with culpability narratives, from immunity to impunity to stories of self-incrimination, in which international lawyers confess to the crimes of the discipline. We even use the language of detectives to describe our academic work; we interrogate texts, conduct investigations, make inquiries and collect evidence.[37] Political convictions mutate into criminal convictions in Koskenniemi's epilogue, which is all about taking responsibility for international law. The dark-side of the moral agency he prescribes is criminal responsibility – guilt. While the detective of the whodunit is looking for a single culprit, in suspicious critique, 'guilt is always collective and social – the result of unethical structures rather than immoral persons'.[38] In culpability narratives the detective, says Felski, is always 'braced for bad news' and undertakes their investigation 'in a spirit of heightened mistrust'.[39] This mirrors the paranoia of the hermeneutics of suspicion, which anticipate the worst. As well-versed readers, we come to critical international law work ready to be shocked, but also willing to accept the news that we ourselves are implicated or complicit in hegemony and injustice.

A preference for bad news over good is evident in Koskenniemi's exchange with David Dyzenhaus. Dyzenhaus challenges Koskenniemi's indeterminacy thesis, suggesting that it corresponds to a 'mistaken belief' that anti-formalism is 'empirical fact about the world' (40). Koskenniemi's response reiterates his structural bias argument; an argument will be considered good depending 'on the audience or the institution operating as any institution does, by reference to its embedded bias' (397). For Koskenniemi, *any* decision must be the result of anti-formalism because formalism is empty and cannot determine argument. International law's universalism comes from seeing legal form as a 'flat, substanceless surface'.[40] Formal law is not so much a level playing field, as a sprung floor for a perpetual *pas des deux*.

Dyzenhaus seeks determination without power in Habermas' idea of the forceless force of better argument (50). The equation does not compute for Koskenniemi because the better argument is valid according to the power relations that constitute the discourse in question. If the moment of decision, the point at which legal argument is determined, could be photographed, it would yield a snapshot of unequal power relations. Foucault tells us that decisions only happen when power relations are caught off-balance. But to suggest, as Koskenniemi seems to, that these moments amount to hegemony – which is akin to Foucault's idea of the state of domination, a particular case of power relations that have become fixed and immobile – is to write institutions off by projecting this constellation into the future, a template that reproduces its result over and over again. This would indeed

[37] Felski makes a similar point about literary critics and the 'language of guilt and complicity', n 3 above, 86
[38] ibid, 90
[39] ibid, 88 and 91
[40] Martti Koskenniemi, 'What is international law for?' in *The Politics of International Law* (Hart, 2011), 256

amount to a situation in which power relations had become 'frozen, blocked',[41] but it does not mean they could not be otherwise in the future.

Critique suffers from confirmation bias. Like all good detective stories, its starting point is the commission of a crime. Even when a smoking gun has not been unearthed, critique operates in the future anterior – a crime *will have been* committed. As Derrida puts it, what is to come (*a-venir*) 'can only be anticipated in the form of an absolute danger'.[42] In states of ambivalence, then, the next wrong lurks just around the corner. This fear resonates with Sedgwick's idea of suspicious critique as a form of paranoid reading. The paranoiac wants to eliminate bad surprises and that this requires that 'bad news be always already known' because they cannot risk being caught off-guard in the future.[43]

The contributions by Jaye Ellis, Toope and Brunée and Nigel White adopt a different narrative structure. Instead of uncovering a crime, they look forward towards what is to come and see hope and opportunity in the empty spaces of neo-formalism and argumentative indeterminacy. Writing about peace negotiations, White draws on Habermasean intersubjectivity to suggest that international law, though too indeterminate to resolve the dispute itself, operates as a stabilising force in the political process (76), by providing common ground for the disputants (79). Ellis thinks about how law can retain its identity in scientifically complex international environmental regimes. Using a systems theoretic approach, she reads Fischer-Lescano and Teubner alongside Koskenniemi, using the 'culture of formalism' and the 'constitutional mindset' to characterise distinctly legal operations (100-101). Toope and Brunée use a constructivist approach to extrapolate the aforementioned culture of legality.[44] Each of these writers sees a future in which international law would cease to be determined by certain actors' 'material power' alone (147).

For Koskenniemi, these futures might be possible, but they are not plausible. Optimism is a high-stakes gamble and the odds are against success, so he demands countervailing reasons to displace the presumption of bad faith he attributes to international decision-makers. We cannot gather this evidence, however, because we have no 'psychological access to whether something is 'genuinely' shared' (396). The hermeneutics of suspicion dispenses with the presumption of innocence and views every untested proposition or ambiguity as a crime waiting to be committed. Koskenniemi places the burden of proof on the optimist because he expects to encounter hegemony. Against this litany of unredeemed failure, international

[41] Michel Foucault, 'The Ethics of the Concern for the Self as a Practice of Freedom' in Paul Rabinow (ed.), *Essential Works of Foucault 1954-1984, Vol 1 Ethics*, (Penguin, 1994), 292
[42] Jacques Derrida, *Of Grammatology* (Johns Hopkins University Press, 1976), 5
[43] Sedgwick, n 2 above, 130
[44] *Above*, at s. 2(a)(ii)

law's rap sheet speaks of unequal power relations and façade legitimation, an ever-accumulating body of corroborating evidence.

A predilection for certain sorts of stories also means that we tend to turn our attention to places we expect to find them. Koskenniemi tethers his epilogue to the Transatlantic and Transpacific Partnership Treaties (TPP and TTIP), using them as a context in which his theories about international law can play out (394). I wonder how many international lawyers remain under the spell of these international instruments. Hundreds of us have signed letters of protest against the initiative, both in the North America and in Europe.[45] Using TTIP to tell the story of the dangers of international law's enchanting powers is like using the movie *Jaws* to teach beach safety. International law is, undeniably, riven with violence and unacknowledged crimes – but these crimes are only some of the stories we can tell about it.

3. Characterising the critical professional

Koskenniemi is the principal victim of his own antinormative normativity. It hollows out his call for institutionalised international lawyers to exercise moral agency in their work and take responsibility for the decisions they make and the advice they give. How can international lawyers incorporate the sorts of reflective practices this would presumably require in their working lives? What if their gut feelings told them to prioritise national or institutional concerns? How is reflective responsibility different from compliant – forgive me - responsibilisation? Koskenniemi does not answer these questions, but we can infer the responses he might give from his adherence to the norms of suspicious critique.

In this section, I use Koskenniemi's anti-normative normativity to substantiate the morally responsible, emotionally literate international lawyering he advocates. The figure that emerges from this reading is, to adopt Sahib Singh's apt label, the critical professional. An individual caught between institutional belonging and independent agency, not 'the critic as intellectual', but a projection thereof (198). Koskenniemi wants to make critical professionals of international lawyers working in institutions. While he seems to have courts, tribunals, inter-governmental organisations and the like in mind, we should also remember that academics are institutionalised, too – in universities, societies and through research programming. If 'international law is what international lawyers do and how they think',[46] it will remain enchanted until *all* international lawyers embrace suspicious ways of seeing.

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[45] For North America, see 'An open letter about investor-state dispute settlement' (April 2015) at https://www.mcgill.ca/fortier-chair/isds-open-letter; for Europe see, https://stop-ttip.org/blog/legal-statement-on-investment-protection-in-ttip-and-ceta/ (URLs last accessed 10 April 2018)

[46] Martti Koskenniemi, 'Between Commitment and Cynicism: Outline for a Theory of International Law as Practice' in *Collection of Essays by Legal Advisers of States, Legal Adviser of International Organizations and Practitioners in the Field of International Law* (United Nations, 1999) 523

The epilogue is the latest in a long line of attempts to say more about how we should use international law in order to further emancipatory projects and avoid supporting hegemonic ones. The key to all the ideas is that international law actors must exercise moral responsibility by acting self-consciously and reflecting on the politics of their work. One, the constitutional mind-set, means focusing on the 'the practice of professional judgment', irrespective of functional interests.[47] Another, the culture of formalism, denotes 'a culture of resistance to power, a social practice of accountability, openness, and equality whose status cannot be reduced to the political positions of any one of the parties' involved.[48] The epilogue introduces the idea of that the engine of moral agency is the 'gut feeling' (411) of the individual international lawyer – a 'fleeting sensation' of injustice. Koskenniemi supports this intuition by referring to Adam Smith's theory of moral sentiments (410).

Who is this individual who exercises professional judgment in a way that resists power and is driven by emotional instinct? Koskenniemi swathes them in so many gauzy layers of misdirection that they escape our intellectual grasp. His strategy is to preserve moral agency from suspicion by making the idea elusive and insubstantial, and he cradles a vision of hope that is allusive rather than abstract – perceptible only as 'fleeting sensations', a phrase echoed by some of the contributors.[49] Koskenniemi gestures his intentions and avoids packaging this ideas in easily abstractable language. His ideas are revealed obscurely - carefully coded messages to like-minded lawyers. The absence of a ready label in the new epilogue suggests that Koskenniemi has been burned by the widespread take-up of 'the culture of formalism', including by 'reactionary jurists', a worry he discusses in his interview with Obregón (384).

Such fears are understandable, but not even naming his politically-engaged, emotionally-aware moral agent of an international lawyer undermines the critically transformative power of the idea. This anonymous aspiration is hope incognito, a figure that will only be recognised by those already in-the-know. Gregor Noll puts a gentler spin on this, suggesting Koskenniemi 'may be understood to eliminate creation while retaining redemption as a transcendent source of normativity' (23). In an attempt to reclaim this power, I lend Koskenniemi's figure a name and a face and the rest of the essay draws on literary fiction to characterise these critical professionals.

a) Reclaiming critique

[47] Koskenniemi, n 9 above, 18
[48] Koskenniemi, n 8 above, 500
[49] Koskenniemi uses it at 410. Noll (33) and Singh (198) both refer to it.

In his 'excavation' of the critical professional, a version of an essay also published in the *Leiden Journal of International Law*,[50] Singh makes a doubly suspicious reading of Koskenniemi's work to present a critical subject precisely recalling Felski's idea of the critic as detective, who gets their insight by standing back in, as Singh puts it following Sartre, an 'interrogative attitude' (203). This subject is produced, sustained and tormented by certain antinomies which make this attitude possible (198). Negations, he explains, lead to 'frustration, anxiety and anguish' by sustaining a 'kernel of nothingness' in the critic's heart, which detaches them from the world (205). Using Sartre and then Barthes, Singh digs down into Koskenniemi's writing to unearth the dangerous nature of Koskenniemi's critical subject. Firstly, these subjects risk 'perpetuat[ing] and reproduc[ing] the very ideology of liberalism that it seeks to challenge' and secondly, they resist exposure because of the myths that entrench and reproduce them (212-215).

Singh's critique is scholarly and sharp, but, as suspicion is wont to do, it lays waste to all before it. I wonder if we can rehabilitate the critical professional. Can we say more about this figure, rather than writing them off as one of critique's usual suspects? Embodying the critical professional calls for some creative thinking. Koskenniemi makes the task especially difficult by leaving scant clues for us to go on, living up to Sedgwick's description of the mimetic nature of such critique, which always seeks to remain above suspicion.[51] Embarking on this challenge, I pack away the tools of high theory and take some inspiration from literary criticism, instead. I am not looking for a pinioned subject, but a living character. I turn to fiction in order to put meat on its bones, bringing moral agency to life in the form of a fictional character – the maverick cop. Like Koskenniemi's responsible international lawyer, the maverick cop is a critical professional: an insider with critical purchase on their institution.

Fiction is a privileged medium that can put feelings into words in ways that capture ambivalence and elusiveness – good fiction is not point-and-click description. Given the importance that Koskenniemi attaches to sentiments and, for some time, sensibilities, it seems a promising place to look for ways of talking about unobservable, personal affective phenomena. For Koskenniemi, sensibility is a matter of 'both ideas and practices, but also involves broader aspects of the political faith, image and self, as well as the structural constraints within which international law professionals live and work'.[52] Fictions help us think about the internal, as well as extant aspects of sensibility and offer us, perhaps, the 'alternative vocabularies' that Koskenniemi hopes will help us escape 'the pure immanence [of systems] that are professional talk all the way down' (411).

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[50] Sahib Singh, 'Martti Koskenniemi: Theories and Images of the International Lawyer' (2016) 29(3) LJIL 699-726

[51] Sedgwick, n 2 above, 131-133

[52] Koskenniemi, n 8 above, 2

In pursuing this creative line of critique, I aim engaged in an act of reclamation.[53] I read Koskenniemi's work reparatively, as Sedgwick counsels – not in order to reconstruct his meaning or to return to some original meaning,[54] but to move beyond the paralysis of suspicion. The reparative impulse is 'additive and accretive' because it wants to 'assemble and confer plenitude on an object that will then have resources to offer an inchoate self'.[55] This is a matter of 'seeking pleasure' rather than 'forestalling pain', not on the grounds that the former is *truer* than the latter – but that neither motive for action can claim to be truer than the other.[56] The pleasure sought here is Orford's 'enlivening, productive and critically transformative' development of international law towards a less repressive future.[57]

Fictions help us to release critical professionals from specific contexts without trying to pull the wool over anyone's eyes. I am emboldened to do this by two of the contributions to the collection under review, both of which break ideas out of their contextual prisons. Marks and Lang draw on Walter Benjamin and Marilyn Strathern 'to fan the spark of hope' they see in Koskenniemi's work, freeing the sensibilities of disciplinary heroes like Hersch Lauterpacht and Wolfgang Friedmann from their historical moment by way of mimesis and improvised performance. In his essay, Gregor Noll makes a cheeky, context-busting move by comparing Koskenniemi to the Jesuit thinker Erich Przywara. He does not make a suspicious reading and there is no big reveal in which Koskenniemi is unmasked as a closet Catholic, rather Noll tries to understand what is going on in Koskenniemi's work on legal argumentation. By putting Koskenniemi's ideas in dialogue with others, both contributions make creative critiques of Koskenniemi's work, ones which enable his ideas and do not shut them down.

b) Fictionality

Fiction is a tool to think with,[58] but not one that necessarily yields answers – we should not start scouring novels for blueprints of international order. Domestic lawyers are (fairly) comfortable with expedient fictions.[59] Fictions can be used as placeholders to allow legal reasoning to continue in conditions of imperfect knowledge or to circumnavigate 'the obstinacy of reality'.[60] I want to put fiction to more critical work. Can it help us to understand as yet unspoken, unforeseen or unconsidered aspects of propositions about international law or, in Koskenniemi's case, international lawyers? Three features of fiction

[53] For more on the importance of creativity for international lawyers see, Isobel Roele, 'The Making of International Lawyers' in Hohmann and Joyce (eds), *International Law's Objects* (OUP, 2018)
[54] Sedgwick, n 2 above, 128
[55] ibid, 149
[56] ibid, 137-138
[57] Above, s. 2(a)(i)
[58] Joshua Landy, *How to Do Things with Fictions* (OUP, 2012)
[59] As pointed out by Gallagher, 348. See generally, Del Mar and Twining (eds), *Legal Fictions in Theory and Practice* (Springer, 2015)
[60] Del Mar, ibid, ix

suggest it might be able to play such a role. The first has to do with its context-transcending properties, the second with its complicated relation to truth and the third with the non-referentiality of its characters.

Koskenniemi's ideal international lawyers get stuck in their contexts. Fiction offers a way to release the sensibility Koskenniemi wishes to inculcate without conjuring the particularities of men like Friedmann and Lauterpacht into abstract rules of general practice. Fictions, as Felski shows, transcend contexts – we can 'feel solicited, buttonholed, stirred up, by words drafted eons ago' and experience 'flashes of transtemporal connection and unexpected illumination'.[61] While recognising the usefulness of contextual thinking, Felski wants to avoid incarcerating meaning in the past because it does not allow us to think about why and how past texts speak to us now.[62] She suggests that the contextualising force of historicism serves a similar role to cultural relativism – 'quantifying difference' and denying relatedness'.[63] Cautiously, then, we might expand her unboxing exercise to other forms of contextual thinking. International law has myriad schemata for contextualising: cultural, functional, procedural, institutional – to name just a few. Fiction might help us unpack international law concepts by moving them beyond a given context. Unlike the multi-author chain novel that Ronald Dworkin used to explain the coherence of case-by-case legal reasoning,[64] the work of unpacking is not about justifying or criticising uses of international legal decisions, but about understanding the potential of ideas.

The second feature of fiction is that it is a form of untruth, but it is not out to deceive. Sir Philip Sidney understood that some untruths 'nothing affirmeth, and therefore never lieth', as Catherine Gallagher wrote in her essay, 'The Rise of Fictionality'.[65] Gallagher investigates a change in the meaning of fictionality during the mid-eighteenth century, when the novel emerged as a particular kind of fiction. The novel 'is not just one kind of fictional narrative among others; it is the kind in which and through which fictionality became manifest, explicit, widely understood, and accepted'.[66] Novelistic fictions are made up, to be sure, but they are not make-believe. Gallagher shows how the novel came into being through a complicated play of imagination and realism which, eventually, readers came to recognise as a category of untruth that was neither fact nor deception.[67] Novels emerged as 'believable stories that did not solicit belief'.[68]

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[61] Felski, n 3 above, 155
[62] ibid, 157
[63] ibid, 156
[64] Ronald Dworkin, *Law's Empire* (Harvard UP, 1986) 228-238
[65] Catherine Gallagher, 'The Rise of Fictionality' in Franco Moretti (ed.) *The Novel*, Vol. 1 (Princeton UP, 2006) 336-363, 337 quoting Sir Philip Sidney, 'The Defense of Poesy' in *The Prose Works of Sir Philip Sidney* (CUP, 1962), 29
[66] ibid, 337
[67] ibid, 338
[68] ibid, 340

We have no mode of declared untruth in international law – *is* and *ought* statements alike make truth claims. In a post-fact world, we are out of step with the times. Domestic lawyers have developed more sophisticated ways of relating to truth. According to William Twining, Bentham's view that fictions are 'wicked falsehoods' is unheard of in domestic common law.[69] Lon Fuller, for one, thought the utility of a fiction depended on the user's consciousness of its falsity.[70] At the risk of taking these uses of fiction out of context, I venture to suggest that international law could cultivate a capacity to appreciate untruths as such, too.[71]

Fictional characters are a particular instance of the complication of fantasy and reality in fictions. Gallagher explains how the novel developed non-referential characters, ones that are not thinly veiled ciphers for real people, and which enabled a referentiality greater than any individual.[72] She quotes Charles Grivel, '*le personnage…n'est personne*'.[73] Embracing this approach would make it possible to characterise the culture of formalism without, for example, walling Friedmann up in his historical context, as Koskenniemi does in his epilogue.[74] A novel's characters transcend their fictional context every time a reader, embedded in their own context, sympathises with, identifies with, or judges a character.

This third feature of fictions flows from the way they refer to reality without making truth claims about it. This involves two intertwined movements, one on the part of the fiction and one on the part of the reader. Gallagher explains how fictions developed from being characteristically fantastic (incredibility meant they were readily distinguishable from deceptions) to being characteristically probable, bearing a greater resemblance to reality. Readers developed a parallel capacity to engage with fiction – disbelief was a condition of the increasing believability of novels. Gallagher shows how readers adopted attitudes of 'ironic credulity enabled by optimistic incredulity'.[75] Engaging with fiction is not a matter of being blindly immersed *or* ironically detached. The reader retains their critical faculties insofar as they understand themselves to be engaged with a work of fiction.

Fiction does not suspend critique, but demands it. The critical reader's disposition cannot, however, be suspicious. Active disbelief erects a barrier between the reader and the fiction, partitioning off fantasy from reality, lest the world be enchanted by misleading fictions. The value of fiction is that it treats fantasy as an invitation to explore and not an imperative to foreclose consideration – untruth is not always deceptive and enchanting. Fictional characters are nonreferential, but not insubstantial and they transcend their fictional

[69] Del Mar and Twining, n 59 above, vii
[70] Lon L. Fuller, *Legal Fictions* (Stanford UP, 1967)
[71] See also Roele, n 53 above
[72] Gallagher, n 65 above, 342
[73] ibid, 351
[74] *Above*, at 2(a)(ii)
[75] Gallagher, n 65 above, 346

contexts as rounded individuals who invite critical engagement, not abstract subjects that repel it. Fictions might prompt us to acquit or convict, to criticise or justify – either or both. Moreover, fictional contexts are not exclusive and do not have the final say on whatever international law ideas we may read through or alongside them. I read Koskenniemi's work alongside David Simon and Ed Burns' HBO TV series *The Wire*. Other tropes in different stories would, of course, yield alternative analyses. I lift characters out of the fictionalised context of Baltimore at the turn of the Millennium and draw them across contextual boundaries into present day international law. My aim is to show that fiction helps us 'to think about the power and limits of [international lawyers'] professional commitments and the role of moral and political responsibility' (405). In reading Koskenniemi's critical professionals as maverick cops, I am not trying to tell the whole truth about them. I am trying to build an understanding of what it means to be a critical professional. It is an approach to critical reading that looks a text in the eye and spends time attending to its implications, however discomfiting, unexpected or inconvenient these turn out to be, over suspicious techniques that turn away, having already dismissed them as dangerous.

Calling on the maverick cop to understand Koskenniemi's critical professional tinkers slightly with Felski's resort to detective fiction to describe the imaginary of the critic. Here, we are in the realms of the police procedural and not the whodunit. The detective is not a brilliant amateur like Sherlock Holmes, Miss Marple or Lord Peter Wimsey, or a private dick like Philip Marlowe or Jessica Jones. Instead, they are marginal figures *within an institution*, professionals not amateurs. Maverick cops come in many shapes and sizes – from Columbo, the shambling working-class detective who sees through the glamour of the LA glitterati, to Inspector Morse, an Oxford drop-out who cannot be conned by the dons he investigates, and Stella Gibson, who faces down the patriarchy in Northern Ireland, maverick detectives are suspicious of authority and do their jobs all the better for it.

As critical professionals, maverick cops present *appealing* characters whose lives we might not want to emulate, but whose unsentimental compassion and dedication suggest a professional balancing act that is otherwise difficult to pull off. They enjoy what Felski calls a 'halo effect', an 'aura of rigour and probity that burnishes its dissident stance with a normative glow'.[76] The maverick cop embodies, to borrow a phrase from Foucault, 'the art of voluntary inservitude, of reflective indocility'.[77] This character recognises, like Koskenniemi's critical international lawyer, that 'the progress we hope for is not *within* the law but can be accomplished *through* law' (410).

i. Protocol

[76] Felski, n 3 above, 8
[77] Foucault, n 18 above, 386

The maverick cop, like the critical professional international lawyer, is able to work within an institution without adopting its structural biases, always conscious of the option of acting otherwise than protocol demands. Constitutionally suspicious of bosses, this character's disposition recalls the attitude of suspicious critique where,[78]

> [d]istrust of one's betters is signalled via oblique looks and knowing grimaces…a form of critique that is voiced offstage, muttered behind the backs of a more dominant group.

Instead of blindly following orders, maverick cops exercise a version of 'responsible agency' (398). Moral sensibilities guide their work, creating, if not Kantian moral politicians, then moral professionals who exercise judgment 'which is neither rationally subsumed under a rule nor a fully subjective expression of emotion'.[79] Like the international lawyer with moral agency, this character constantly renegotiates their loyalties against institutional bias (397) by following a hunch and trusting their gut.

Central to the maverick cop's identity is a willingness to say no and act otherwise than the system directs. Writing elsewhere, Koskenniemi has noted,[80]

> In a world where every influential institution preaches for consensus, the power of negativity remains a vital force while calls for consensus and harmony, especially when preached from above, are equal to "shut up".

Reserving the right to say no, international lawyers walk a line between being a cog in the machine and being a spanner in the works.

As viewers, we trust maverick cops to break the rules or disobey orders. What is it about the maverick cop that sets them apart from that other mainstay of the police procedural, the corrupt cop? Why do we root for Idris Elba's John Luther, even though he beats up suspects and works with a serial killer? Maverick cops are often, sad love lives and alcoholism notwithstanding, exceptionally competent. Think of Lester Freamon in *The Wire* deciding, against orders, to follow drug money as well as drug violence, and combing the archives rigorously, methodically, patiently to create a paper-trail that leads directly to City Hall. Many of these characters are also profoundly committed to their profession, which they seek to redeem from a corrupt institution. Sometimes the corruption is the criminal corruption of a Serpico, but more often cops, like Colin Dexter's Inspector Morse, buck against restrictive red tape and protocol that threaten to derail a promising line of

[78] Felski, n 3 above, 44
[79] Koskenniemi, n 9 above, 32
[80] Martti Koskenniemi, 'Law's (Negative) Aesthetic: Will it save us?' (2015) 41(10) *Philosophy and Social Criticism*, 1042

investigation. Mutual mistrust of management, then, is a common trait for maverick cops and international lawyers as critical professionals alike.

ii. Priors

Often the gap between being committed to one's profession and being institutionalised is illustrated by the maverick cop's experience and institutional knowledge. Detective Freamon, for instance, served out 13 desk-bound years in Baltimore PD's pawnshop unit until he became part of the institutional furniture and his insubordination was forgotten. His relationship with Jimmy McNulty, a younger detective, is instructive. Freamon predicts that McNulty, whose bloodhound instincts and disdain for authority are marinated in whiskey, will attract the ire of his superiors and offers stringent counsel when he thinks McNulty goes too far. The accolade 'natural po-leece' is bestowed or withheld and always intoned with a reverence that harks back to a tradition that speaks of, in Marks and Lang's terms, 'exemplary forerunners, the ancestors on whom we should model ourselves' (332). The maverick cop can, in this way, help Koskenniemi distinguish between those with a respect for tradition and agents of 'moralist conservatism' who fetishise 'former times' (398).

Instead, the trope enacts Marks and Lang's notion that the past is 'a force to be felt, a secret sympathy to be sensed' (335) and not a Human Resources training manual. They show how, in writing episodes from the lives of luminaries like Lauterpacht and Friedmann, Koskenniemi does not urge us to reenact their careers, so much as show us how tradition can be handed down in a 'flash' of recognition without being overcome by conformism (321-323). As they point out, there is a tone of nostalgia about this, a homesickness that comes 'from feelings of loss and estrangement' (327). These feelings need not dissuade us from trying to emulate great men whose times have passed. Instead, they prompt us to recognise that life has moved on when we are inspired by them to make our 'improvised performances' (335).

We see this sort of improvisation in the work of the maverick cop. They reject protocols and use old techniques handed down by their mentors to feel out a crime scene rather than analysing it at a distance. In interpreting the sense-data they receive, maverick cops use their sensibilities as much as their cognitive faculties. These practices are not taught in training college, but picked up on-the-job. There is no training manual, for instance, that describes McNulty and Bunk Moreland's sensational, monosyllabic recreation of a crime in the first season of *The Wire*, or Kima Greggs' reconstruction of an alley-way shooting in Season Four. Greggs learns her careful, close attention from the experienced homicide detective Moreland, who explains the technique in two words - 'soft eyes' – and invokes no detailed methodology at all. These detectives do not stand back for clearer insights, they inhabit the space of investigation, decoding the scene of the crime with their sensibilities as

well as their reason. A similar kind of embodied thinking and perspicacity is suggested by Koskenniemi's turn to 'gut feeling' and political awareness.

iii. Prospects

For all their competence and regret that the profession has been managerialised, mavericks never become new brooms – imagine Freamon on a leadership and management course. Disdaining the greasy pole of promotion allows him to say quietly, firmly and repeatedly 'no, I will not'. By contrast, career-minded Cedric Daniels contemplates leaving the Baltimore PD for the bar when he falls foul of management. If Daniels recalls the well-meaning mainstream, Freamon resembles the critic. Koskenniemi's approach to transforming international lawyers into good critics confines them to the same sort of case-by-case approach that only allows maverick cops to make progress within the space of an episode. For Koskenniemi, 'the injustice of the world is a *product* of its ruling symbolic order and therefore cannot be treated by it' (411). The implication is that there is no point in reforming the system – the most you can do is learn to play it.

This reading of the maverick cop/critical international lawyer brings to mind Felski's insight that 'the imagined location of critique…is elsewhere: outside, below, in the margins, at the borders'.[81] A transformative project or a reclamatory critique is the last thing the maverick would offer – to do so would be to centralise critique. In contrast to the maverick cop's peripheral noncompliance, Bunny Colvin's Hamsterdam project – he is a district commander in the Baltimore PD who corrals the drug trade in a brown-bag zone when his frustration with Comstat's metrics reaches tipping point – takes on the system. The project teeters on a knife-edge of praise or blame; does it reduce drug violence, or does it condone drug use? Under the glare of media suspicion, Colvin cannot fail to lose and is ousted from the police force. Ending years of steadfast service in ignominy, the scheme exposed the pathologies of the War on Drugs in a way that McNulty and Freamon's low-level insubordination could not hope to approach. The trouble with suspicious critique is that, in Orford's words, its 'relentlessly negative operation' is no response to 'neo-liberal political culture that depends upon cynical reason for its consolidation and expansion' (309). The institution churns on, absorbing the maverick cop as an anomaly.

As Singh insightfully describes the critical subject, so the maverick cop 'lives an essentially unhappy and constantly burdened existence, who can always realize his free choice, all the whilst knowing that any freedom can only ever be fleeting' (207). The maverick cop is a character who can only make progress within the space of an episode and the critical international lawyer is only allowed to be progressive within a given case. Creativity is contained in tightly circumscribed contexts. Critical professionals do nothing to reclaim their

[81] Felski, n 3 above, 119

institutions, instead reliving the eternal recurrence of the same, series in and series out. Written by an ex-homicide detective and an ex-Baltimore journalist, *The Wire* is unlike most police procedurals in this respect. It cleaves much closer to reality than other fictions – it is even set on sociology courses. The net effect is not to dull our critical faculties, but to sharpen them. It demands political engagement from its audience, as cases overflow series, tangling up plotlines and enmeshing the viewer in the richly drawn life of Baltimore. The show places its maverick cops in a single unfolding and complex plot, removing them from the usual endless parade of boxsets in which nothing ever changes but the crime itself and the alimony demands of the protagonist's ex-wife.

The characters of McNulty and Freamon suggest how the unboxed, *longue durée* narrative space tested the limits of the maverick cop's ability to live with the future anterior tense of suspicious critique.[82] In the final season of *The Wire*, the pair embark on a hair-brained scheme to save their Major Crimes investigation from being shut down by the bosses. They want systemic change. They want to be able to pursue long-range, slow-moving investigations without being pressed to produce short-term gains to boost department metrics. But they do not fight to change the system. Instead, they limit their intervention to the context of a specific case, creating a fake serial killer that they can pretend to investigate in order to justify their wire-tap. In allowing the characters' frustration with the system to build over five seasons, Simon and Burns reveal the limitations of the maverick cop as figure for the ideal international lawyer.

The storyline is a shark-jumping moment that encapsulates the frustration of a critical professionalism which moves endlessly from case to case without ever engaging the meta-structures. The scheme seems equally admirable and ridiculous. It narrates the unending struggle of resistance in a much less heroic register than the ones with which we critical international lawyers might prefer to associate ourselves. Critical professionalism can be bathetic as well as effortful and noble. Good fiction offers us ways of thinking with ambivalence and not against it. Like Simon and Burns' work, it offers neither easy answers nor happy endings, but it gives us a privileged space to dwell on the way international lawyers work.

4. Conclusion

Suspicious critique shuts down enlivening, transformative and productive international law work in international organisations, courts and universities alike. International law's future is always already determined. Operating in the future anterior, suspicion declares that international law will have been part of the problem and refuses to countenance any but the bleakest narratives, lest international lawyers be blinded into complacency by the

[82] Above, at s. 2(b)

glimmer of hope. Without doubt, we need to exercise caution in international law scholarship – when we check under the bed, we often find a bogeyman there - but suspicion need not be our only mode of scholarship.

We need more creative projects for critical minds, ones that enable us to encounter ambivalence, not avoid it. As the editors of the present volume write, 'international law is (also) the product of the imagination of international lawyers' (3). Koskenniemi seems to imagine a future for international law in which lawyers are critically engaged professionals, grappling with the structural bias of their institutions one case at a time. Suspicious critique fears that, unmoored from a specific context, concepts become abstract and available for conservative purposes as well as progressive ones, and so it boxes them up tight in strict contexts from which they cannot escape. The intimation of any trans-contextual thread is so fragile that the weight of suspicion's direct gaze snaps it. Only the initiated can detect it from the corner of the eye or as 'a fleeting sensation'. Fiction gives us trans-temporal contexts and non-referential characters, which enable us to think about an idea in three dimensions. Good fiction lets us explore ambivalence with an attitude of 'ironic credulity', which is neither blind immersion nor forensic detachment.